

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID KUEHEN,

Plaintiff

v.

DR. AMELIA HAYGOOD, CAROL ROSENBERGER,
AND DELOS INTERNATIONAL, INC.

Defendants.

05 10574 RGS

CIVIL ACTION NO:

MAGISTRATE JUDGE MBS

RECEIPT # 62989

AMOUNT \$ 250

SUMMONS ISSUED YES

LOCAL RULE 4.1

WAIVER FORM

MOF ISSUED

BY DPTY. CLK. TDM

DATE 3/24/05

COMPLAINT AND JURY DEMAND**I. INTRODUCTION**

1. Plaintiffs seek damages arising out of Defendant's breach of conduct and unfair trade practices.

II. PARTIES

2. Plaintiff David Kuehn is an individual residing in Yarmouthport, Massachusetts.

3. Defendant Dr. Amelia Haygood is an individual residing in Santa Monica, California. Upon information and belief, Defendant Haygood is an officer and director of Defendant Delos International, Inc.

4. Defendant Carol Rosenberger is an individual residing in Santa Monica, California. Upon information and belief, Defendant Rosenberger is an officer and director of Defendant Delos International, Inc.

5. Defendant Delos International, Inc. ("Delos") is a California corporation with a principal place of business at 1645 North Vine Street, Suite 340, Hollywood, California. Defendant Delos is engaged in the business of recording and selling classical music. Defendant Rosenberger is one of the artists whose work is marketed by Defendant Delos. The online records of the Secretary of State for the State of California identify Defendant Haygood as the agent for serve of process for Defendant Delos. Defendant Delos operates a web-site at www.delosmus.com. Defendant Delos does not identify itself as a corporation on its web-site. Upon information and belief, Defendant Delos conducts business in the Commonwealth of Massachusetts

III. JURISDICTION AND VENUE

6. The citizenship of the parties to this action is as follows:

- (a) Plaintiff Kuehn is a citizen of the Commonwealth of Massachusetts;
- (b) Upon information and belief, Defendant Haygood is a citizen of California;
- (c) Upon information and belief, Defendant Rosenberger is a citizen of California;
- (d) Defendant Delos is a citizen of California, the state of its incorporation and the state where it has its principal place of business.

7. As is set forth more fully below, Plaintiff Kuehn's damages are \$97,966.15 exclusive of interests and costs.

8. This Court has subject matter jurisdiction pursuant 28 U.S.C. §1332 because Plaintiff Kuehn and the Defendants are citizens of different states (*i.e.* Massachusetts and California) and the dollar amount in controversy exceeds \$75,000.00 exclusive of costs and interest.

9. This Court has personal jurisdiction over the parties because Kuehn is a citizen of the Commonwealth of Massachusetts and the Defendants have regularly transacted business in the Commonwealth of Massachusetts.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial portion of the events underlying this case occurred in this judicial district.

IV. FACTUAL ALLEGATIONS

11. In December of 2000, Defendant Haygood and Defendant Rosenberger approached Plaintiff Kuehn in Massachusetts via telephone and electronic communications to request that Plaintiff Kuehn provide consulting services to Defendant Delos and an organization identified as the Cultural Exchange Foundation. The Cultural Exchange Foundation has been described by the Defendant Rosenberger as a "DBA" without identifying the entity for which the Cultural Exchange Foundation is purportedly doing business. The online records of the Secretary of State for the State of California contain no information showing that the Cultural Exchange Foundation was ever incorporated in California.

12. On or about December 26, 2000, Plaintiff Kuehn accepted the proposal of Defendant Haygood and Defendant Rosenberger and memorialized that acceptance in an electronic communication sent Defendant Haygood and Defendant Rosenberger. The agreement among the parties contemplated a payment of \$1,500.00 per month to Plaintiff Kuehn for services rendered on behalf of Defendant Delos and \$1,500.00 per month on behalf of the Cultural Exchange Foundation. In March of 2001, the parties agreed to increase the compensation to Plaintiff Kuehn to \$3,000.00 per month each for Defendant Delos and for the Cultural Exchange Foundation, which agreement was documented in an exchange of electronic communications between Plaintiff Kuehn and Defendant Haygood and Defendant Rosenberger.

13. Plaintiff Kuehn provided the requested services from December, 2000 through October, 2002. These services included, but were not limited to, development and implementation of marketing strategies, production of recordings, representation of Defendant Delos at trade shows, and promotion of recording artists and cultural events. Most of the services were provided from Plaintiff Kuehn's residence in Massachusetts. During this period there were by numerous telephone and electronic communications from Defendant Haygood and Defendant Rosenberger in California to Plaintiff Kuehn in Massachusetts regarding services rendered.

14. The electronic communications between Plaintiff Kuehn and Defendant Haygood and Defendant Rosenberger were sent and received by personal e-mailed addresses of Defendant Haygood and Defendant Rosenberger rather than e-mail addresses of Defendant Delos International or of the Cultural Exchange Foundation.

15. Plaintiff Kuehn submitted invoices to Defendant Haygood and Defendant Rosenberger for services rendered and expenses incurred on behalf of Defendant Delos and the Cultural Exchange Foundation.

16. On several occasions, invoices submitted by Plaintiff Kuehn were paid by checks from Defendant Delos. On other occasions, invoices were paid by a personal check from Defendant Haygood or Defendant Rosenberger.

17. In 2001, the Defendants stopped paying invoices submitted by Plaintiff Kuehn. Defendant Haygood and Defendant Rosenberger informed Plaintiff Kuehn that they were short of funds. Notwithstanding their inability to pay Plaintiff Kuehn in a timely fashion, Defendant Haygood and Defendant Rosenberger requested that Plaintiff Kuehn continue to provide services and promised to eventually pay Mr. Kuehn for services rendered and to reimburse Plaintiff

Kuehn for expenses incurred on their behalf. At no time, did any Defendant question the quality of Plaintiff's Kuehn's work or the validity of any invoice submitted by Plaintiff Kuehn.

18. Relying upon representations of Defendant Haygood and Defendant Rosenberger, Plaintiff Kuehn continued to provide the services requested until October of 2002 at which point Plaintiff Kuehn terminated the contract due to the refusal and of the Defendants to pay the sums owed to him.

19. At the time that Plaintiff Kuehn terminated the contract, the Defendants owed him \$97,966.15.

20. Plaintiff Kuehn has repeatedly requested that the Defendants pay the amount owed. The Defendants have failed and refused to make the requested payments.

21. According to its web-site, Defendant Delos continues business operation .

IV. CAUSES OF ACTION

COUNT I BREACH OF CONTRACT

22. Plaintiff Kuehn repeats and realleges the allegations contained in paragraphs 1 through 21 of his Complaint as if set forth verbatim.

23. Plaintiff Kuehn and Defendant Haygood and Defendant Rosenberger individually entered into a contract under which Plaintiff Kuehn would provide services to Defendant Delos and the Cultural Exchange Foundation.

24. Plaintiff Kuehn performed his obligations to Defendants Haygood and Rosenberger under the contract among the parties by providing services to Defendant Delos and the Cultural Exchange Foundation in accordance with the terms of that contract.

25. As an additional basis for the individual liability of Defendant Haywood and Defendant Rosenberger, the corporate status of Defendant Delos should be disregarded since, at all times relevant to the Complaint:

- (a) Defendant Delos and the Cultural Exchange Foundation were under the ownership and control of Defendant Haygood and Defendant Rosenberger;
- (b) there was a confused intermingling of the activities of Defendant Delos, Defendant Haygood, Defendant Rosenberger, and the Cultural Exchange Foundation in furtherance of a common enterprise with substantial disregard of the separate nature of the corporate entities and a serious ambiguity about the manner and capacity in which the various entities and individuals are acting;
- (c) Defendant Delos and the Cultural Exchange Foundation were undercapitalized and insolvent; and
- (d) Defendant Haygood, Defendant Rosenberger, and Defendant Delos failed to observe corporate formalities.

26. Defendant Haygood and Defendant Rosenberger breached their contract with Plaintiff Kuehn by all of the above described conduct including, but not limited to, their failure to pay Plaintiff Kuehn for services rendered and expenses incurred on their behalf.

27. As a direct and proximate result of the breach by Defendant Haygood and Defendant Rosenberger of their contract with Plaintiff Kuehn, Plaintiff Kuehn has sustained and continues to sustain damages, and has also incurred costs and attorney's fees.

COUNT II
BREACH OF COVENANT OF GOOD FAITH

28. Plaintiff Kuehn repeats and realleges the allegations contained in paragraphs 1 through 27 of his Complaint as if set forth verbatim.

29. The agreement between Plaintiff Kuehn and Defendant Haygood and Defendant Rosenberger contains an implied covenant of good faith and fair dealing implied in every contract.

30. Defendant Haygood and Defendant Rosenberger have breached the implied covenant of good faith and fair dealing in their contract with Plaintiff Kuehn by all of the above described conduct including, but not limited to, their failure to tender Plaintiff Kuehn all amounts due under the contract between the parties.

31. As a direct and proximate result of the breaches of the implied covenant of good faith and fair dealing by Defendant Haygood and Defendant Rosenberger, Plaintiff Kuehn has sustained and continues to sustain damages, and has also incurred costs and attorney's fees.

COUNT III
UNFAIR TRADE PRACTICES

32. Plaintiff Kuehn repeats and realleges the allegations contained in paragraphs 1 through 31 of his Complaint as if set forth verbatim.

33. Plaintiff Kuehn is engaged in trade or commerce within the Commonwealth of Massachusetts.

34. Defendant Haygood and Defendant Rosenberger are engaged in trade or commerce within the Commonwealth of Massachusetts.

35. By requesting Plaintiff Kuehn to continue to provide services the Defendants and to the Cultural Exchange Foundation when, in fact, Defendant Haygood and Defendant Rosenberger were either unwilling or unable to compensate Plaintiff Kuehn for services rendered and expenses incurred in providing those services, Defendant Haygood and Defendant Rosenberger engaged deceptive acts and practices in violation of Massachusetts General Laws, Chapter 93A.

36. The conduct of Defendant Haygood and of the Defendant Rosenberger occurred primarily and substantially within the Commonwealth of Massachusetts.

37. The conduct of the Defendant Haygood and Rosenberger caused Plaintiff Kuehn to suffer injury in the Commonwealth.

38. On information and belief, the violation of Massachusetts General Laws, Chapter 93A by Defendant Haygood and Defendant Rosenberger was knowing and willful.

39. As a direct and proximate result of the knowing violation of Massachusetts General Laws, Chapter 93A by Defendant Haygood and Defendant Rosenberger, Plaintiff Kuehn has sustained and continues to sustain damages, and has also incurred costs and attorney's fees.

COUNT IV
QUANTUM MERUIT

40. Plaintiff Kuehn repeats and realleges the allegations contained in paragraphs 1 through 39 of his Complaint as if set forth verbatim.

41. Plaintiff Kuehn has delivered valuable services to Defendant Haygood, Defendant Rosenberger, and Defendant Delos.

42. Defendant Haygood, Defendant Rosenberger, and Defendant Delos have failed and refused to tender to the fair value of the services that Plaintiff Kuehn has provided.

43. Plaintiff Kuehn is entitled to reasonable compensation for the value of the services that Plaintiff has provided to Defendant Haygood, Defendant Rosenberger, and Defendant Delos.

44. As a direct and proximate result of these acts, Plaintiff Kuehn has sustained and continues to sustain damages, and has also incurred costs and attorney's fees.

WHEREFORE, the Plaintiff Kuehn, requests that this Honorable Court:

1. Enter judgment against the Defendant Haygood and Defendant Rosenberger on Counts I, II, and III;
2. Enter judgment against all Defendants on Count IV of the Complaint;
3. Award damages to Plaintiff Kuehn in an amount to be determined by the Court;
4. Treble such amount as provided by Massachusetts General Laws, Chapter 93A;
5. Award interest, costs, and attorneys fees to Plaintiff Kuehn; and
6. Award such other relief as this court deems just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS SO TRIABLE.

Respectfully Submitted,
DAVID KUEHN, Plaintiff
By his attorney,



Eugene R. Curry (BBO #549239)
3010 Main Street
Barnstable, Massachusetts 02630
Tele.: (508) 375-0070
Fax: (508) 375-0075

DATED: March 23, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) David Kuehn v. Dr. Amelia Haygood

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Eugene R. CurryADDRESS 3010 Main Street, Barnstable, MA 02630TELEPHONE NO. (508) 375-0070

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

DEFENDANTS

Dr. Amelia Haygood, Carol Rosenberger, and Delos International, Inc.

2005 MAR 24 P 12:21

County of Residence of First Listed Defendant Los Angeles, CA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

Robert Spies, Suite 400, 12400 Wilshire Boulevard, Los Angeles, CA 90025 (310) 826-4325 email: replies@atty.to

PLAINTIFFS

David Kuehen

County of Residence of First Listed Plaintiff Barnstable, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Eugene R. Curry, 3010 Main Street, Barnstable, MA 02630
(508) 375-0070 e-mail: ercurry@eugenecurry.com

BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Law	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Trd.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	LAW	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 850 Selective Service	<input type="checkbox"/> 810 Seafarers/Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 855 Securities/Commodities/ Exchange	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	REAL PROPERTY	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 860 HIA (1395ff)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	CIVIL RIGHTS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	FEDERAL TAX SUITS	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	PRISONER PETITIONS	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Torts Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus:		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 530 General		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 535 Death Penalty		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		

ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1332

Brief description of cause:
Defendants have failed to pay plaintiff for services rendered and expenses incurred pursuant to contract.

REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint:
UNDER F.R.C.P. 23 97,966.15 JURY DEMAND: Yes No

RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

23 March 2005 Eugene R. Curry

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

SCANNED
DATE: 3/25/05
BY: M.P.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
CLERK'S OFFICE1. Title of case (name of first party on each side only) David Kuehn v. Dr. Amelia Haygood

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ATTORNEY'S NAME Eugene R. CurryADDRESS 3010 Main Street, Barnstable, MA 02630TELEPHONE NO. (508) 375-0070